

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

KEVIN JOHN TIX,

**ORDER FOR  
EVIDENTIARY HEARING**

Debtor(s).

BKY 04-33304

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**IT IS ORDERED:**

1. This matter is set for evidentiary hearing on a motion to dismiss under section 707(b) by US Trustee in Courtroom No. 228A United States Courthouse, 316 North Robert Street, St. Paul, Minnesota on **DECEMBER 6, 2004 at 1:30 p.m.**

2. All discovery shall be concluded no later than November 22, 2004, unless an extension is granted upon motion to the Court. **DISCOVERY REQUESTS ARE TO BE LIBERALLY CONSTRUED. COUNSEL SHALL NOT MANIPULATE THE DISCOVERY RULES SO AS TO HINDER, IMPEDE OR OBSTRUCT LEGITIMATE, REASONABLE DISCOVERY REQUESTS. HOWEVER, COUNSEL SHALL NOT USE THE DISCOVERY PROCESS TO HARASS, EITHER BY SEEKING INFORMATION WHOLLY UNRELATED TO THE CAUSE OF ACTION UNDER CONSIDERATION, OR OTHERWISE. SANCTIONS WILL BE IMPOSED UPON A PARTY AND COUNSEL WHO ARE FOUND TO HAVE ABUSED OR MISUSED DISCOVERY. SANCTIONS WILL BE IMPOSED IN THE MINIMUM AMOUNT OF \$500.00, AND MAY BE IMPOSED IN AMOUNTS OF \$1,000.00 OR MORE. ALL DISCOVERY DISPUTES WHICH REQUIRE JUDICIAL RESOLUTION WILL RESULT IN THE IMPOSITION OF SANCTIONS.**

3. On or before November 26, 2004, all parties are expected to confer and enter into stipulations as to the following:

- a) Waiver of objections to the admissibility of exhibits on the grounds of lack of identification or foundation where the identification or foundation is not to be contested;
- b) Waiver of objections to the admissibility of depositions proposed to be offered in evidence, if any.
- c) Facts which are not disputed. This stipulation shall be reduced to writing in a form which can be adopted by the Court as Findings of Fact.

At this conference, counsel shall exchange copies of each exhibit intended to be introduced and relied upon at the hearing. The exhibits shall be pre-marked as required in paragraph 4(d) of this Order.

4. No later than five (5) days prior to the hearing, the parties shall prepare, serve and file the following:

- a) The stipulations regarding admissibility of exhibits and depositions;
- b) The stipulation of facts which are not disputed.
- c) A final witness list containing the names, addresses and brief summary of the testimony of each witness the party will call. A person not listed on this list may not testify during the party's case-in-chief;
- d) A final exhibit list containing a description of all exhibits to be offered at the hearing. Exhibits not listed on this list may not be offered during the party's case-in-chief. Each exhibit shall be marked and the list shall identify the exhibits by their letters or numbers.

The plaintiff shall identify the plaintiff's exhibits with numbers as follows:

Plaintiff's Exhibit 1  
Plaintiff's Exhibit 2  
etc.

The defendant shall identify the defendant's exhibits with letters as follows:

Defendant's Exhibit A  
Defendant's Exhibit B  
etc.

If there is more than one plaintiff or defendant, then the parties shall confer so as to avoid duplication of exhibit identification;

- e) A list of depositions to be offered at the hearing;
- f) A brief containing a complete chronology of the party's version of the facts and a complete statement of the law on which the party relies.
- g) Proposed Findings of Fact and Conclusions of Law.

5. At the time that an exhibit is offered at the hearing, the ORIGINAL plus THREE COPIES of the pre-marked exhibits shall be provided to the Court, with a copy being made available to the court recorder operator for the use of the court.

6. Upon settlement, each party has an independent obligation and shall notify the calendar clerk, within 24 hours after a settlement agreement has been reached. Unless the Court orders otherwise, the settlement documents shall be filed within ten (10) days after oral notice of the settlement.

7. The dates fixed in this order are mandatory. Deadlines shall not be extended except on motion and for good cause.

8. Failure to timely comply with this order may result in the imposition of sanctions under Bankruptcy Rule 7016 and Fed. R. Civ. P. 16(f).

9. Fed. R. Civ.P. 26(a)(1), (a)(2), (a)(3) and (f) do not apply in this proceeding.

Dated: September 22, 2004

/s/ Dennis D. O'Brien  
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on <u>9/22/04</u> Patrick G. De Wane, Clerk By <u>NAB</u>
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

I, Nancy A. Brill, hereby certify:

That I am the Calendar Clerk for Judge Dennis D. O'Brien, of the United States Bankruptcy Court for the Third Division of the District of Minnesota at St. Paul, and that on September 22, 2004 true and correct copies of the annexed:

**ORDER FOR EVIDENTIARY HEARING**

were placed by me in individual official envelopes; that said envelopes were addressed individually to each of the person(s), corporations, and firms at their last known addresses, were sealed and on the day aforesaid were placed in the United States mails at St. Paul, Minnesota, to:

SARAH WENCIL  
1015 US COURTHOUSE  
300 S 4TH ST  
MINNEAPOLIS MN 55415

MARY JO A JENSEN-CARTER  
BUCKLEY & JENSEN  
1339 E CTY RD D  
VADNAIS HTS MN 55109

MICHAEL G HAMILTON  
TANNER HAMILTON & ASSOCIATES PA  
PO BOX 65  
HASTINGS MN 55033

KEVIN JOHN TIX  
1307 W 16<sup>TH</sup> ST  
HASTINGS MN 55033

and this certificate was made by me.

/e/ Nancy A. Brill  
Deputy Clerk